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In re Application of
Fong et al.
Application No.: 09/381556
PCT No.: PCT/US98/05505
Int. Filing Date: 20 March 1998
Priority Date: 21 March 1997
For: Rapid Production of Autologous Tumor
Vaccines by Using HIV Amplification Vectors

COMMUNICATION

This communication is in response to the "Letter" filed on 24 May 2000, which is being treated as a petition under 37 CFR 1.182.

BACKGROUND

Applicants filed international application PCT/US98/05505 on 20 March 1998, which designated the United States and claimed a priority date of 21 March 1997. A Demand electing the United States was filed on 01 October 1998, which was prior to the elapse of 19 months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired as of midnight on 21 September 1999.

On 21 September 1999, applicant filed a Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 which was accompanied by, *inter alia*, the required basic national fee. The Transmittal Letter was not accompanied by an oath or declaration of the inventors.

On 04 November 1999, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants. The Notification required the submission of an oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) and a surcharge under 37 CFR 1.492(e).

On 05 January 2000, applicants filed a "Response To Notice To File Missing Parts", an executed Declaration of the inventors, a check for \$120.00 and a postcard receipt. The postcard receipt and Response both indicated that the papers were directed to application number 09/045,476, rather than the instant application.

On 21 July 1999, a Notification of a Defective Response (Form PCT/DO/EO/916) was mailed to applicants, indicating *inter alia* that "all of the requirements set forth in the notification of missing requirements... mailed 12 July 99 have not been completed (need English translation of international application)."

On 24 May 2000, applicants filed the instant "Letter" and attachments.

DISCUSSION

Applicants assert that the declaration and surcharge required by the Notification of Missing Requirements of 04 November 1999 were filed on 29 December 1999. As proof, applicants have provided a copy of a return postcard receipt itemizing a "Response to Notice to File Missing Parts; Combined Declaration and Power of Attorney Check #5719 for \$120 Postcard", along with certain photocopies. The postcard receipt bears a stamp indicating a date of receipt of "JAN 05 2000."

MPEP 503 states in part that "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Thus, the postcard constitutes *prima facie* evidence of receipt of the enumerated items on 05 January 2000 (the date stamped). The papers filed on 24 May 2000 include "copies" of a check, a "Response to Notice to File Missing Parts" and an executed "Combined Declaration and Power of Attorney. The copies of the "Response" and the Declaration are being accepted as copies of the papers itemized on the return postcard receipt. However, the postcard receipt and the "Response" both indicate that these papers are directed to application number 09/045,476 and docket number MSK-P-031US or MSK-P-031USNP. Meanwhile, the Declaration is directed to application number 09/381,556 and PCT/US98/05505, as well as docket number MSKP031USNP. Review of the file history and Office records indicates that application number 09/045,476 was related to this application, but had as a docket number "MSK.P-031FU" - different from the docket numbers contained on the correspondence at issue.

Upon proper renewed petition and payment of the required \$130.00 petition fee, the papers will be accepted as though they had been filed in this application.

Concerning the copy of a check accompanying the "Letter" and itemized on the postcard receipt, review of Office records reveals that the \$120.00 in question was credited to application number 09/045,476. On the basis of the evidence of record, those funds are being credited to this application. The \$120.00 represents the small entity fee for a one month extension of time and the small entity surcharge under 37 CFR 1.492(e). However, applicants have not established that they were entitled to small entity status. Therefore, pursuant to the fee authorization in the

"Response", counsel's Deposit Account No. 15-0610 is being charged in the amount of \$120.00 for the balance of the fees.

In view of the above discussion, the requirements of the Notification of Missing Requirements mailed on 04 November 1999 have been satisfied.

CONCLUSION

The petition is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for further processing. The date of this application under 35 U.S.C. 371 and 102(e) is **05 January 2000**.



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